

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MEDPOINTE HEALTHCARE INC.,

Plaintiff,

vs.

APOTEX INC. and APOTEX CORP.,

Defendants.

Civil Action No. 06-164-SLR

STIPULATED ORDER

IT IS HEREBY STIPULATED and agreed upon by Plaintiff MedPointe Healthcare Inc. ("MedPointe") and Defendants Apotex Inc. and Apotex Corp.

(collectively, "Apotex"), by and through their respective counsel of record, that:

A. Apotex has submitted ANDA No. 77-954 to the FDA, seeking approval to market a generic version of MedPointe's Astelin[®] (azelastine hydrochloride) Nasal Spray prior to the expiration of United States Patent No. 5,164,194 ("the '194 patent").

B. In its Amended Complaint (D.I. 5), MedPointe has alleged, *inter alia*, that Apotex's submission of ANDA No. 77-954 to the FDA constitutes infringement of the '194 patent under 35 U.S.C. § 271(e)(2).

C. In its Answer to the Amended Complaint (D.I. 11), Apotex has sought a trial by jury for all matters for which it was entitled to a trial by jury.

D. MedPointe moved to strike Apotex's jury demand as part of its Motion To Strike Apotex's Jury Demand, Strike Apotex's Affirmative Defense Of Unenforceability, Dismiss Apotex's Counterclaim Of Unenforceability, And Strike Apotex's Affirmative Defense Of Misuse (D.I. 16).

E. Apotex will agree to voluntarily withdraw its demand for trial by jury if this Court will give it leave to reinstate its demand for trial by jury should circumstances change and MedPointe requests an award of monetary damages.

Pursuant to the foregoing stipulation, **IT IS HEREBY ORDERED**

THAT:

1. Apotex's jury demand is hereby WITHDRAWN without prejudice. Apotex shall have the right to renew its jury demand, and MedPointe shall have the right to move to strike any such renewed demand if MedPointe seeks monetary damages from Apotex in this action.

2. The portion of MedPointe's Motion To Strike Apotex's Jury Demand, Strike Apotex's Affirmative Defense Of Unenforceability, Dismiss Apotex's Counterclaim Of Unenforceability, And Strike Apotex's Affirmative Defense Of Misuse (D.I. 16) that seeks to strike Apotex's jury demand is hereby WITHDRAWN without prejudice, and with leave to reinstate should Apotex seek to renew its jury demand.

RICHARDS, LAYTON & FINGER P.A.

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SO ORDERED:

This ____ day of _____, 2006

HONORABLE SUE L. ROBINSON
UNITED STATES DISTRICT JUDGE

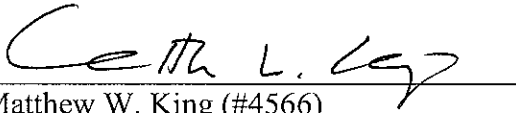
CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2006, I electronically filed the foregoing with the Clerk of Court using CM/ECF, which will send notification of such filing, and hand delivered to the following:

Richard L. Horwitz
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I hereby certify that on May 19, 2006, I sent the foregoing document by Federal Express, next business day delivery, to the following non-registered participant:

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